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EXAMINER

SCHWARTZ, CHRISTOPHER P

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/775,881
Filing Date: February 10, 2004
Appellant(s): LEMMENS ET AL.

MAILED
OCT 13 2005
GROUP 3600

Michael J. Schmidt
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 29, 2005 appealing from the Office action mailed January 25, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

LB

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Claimed Subject Matter*

The statement of the summary of claimed subject matter is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The Brief contains a concise statement for the ground(s) of rejection presented for review.

(7) *Argument*

The Brief contains an argument with respect to each ground of rejection presented for review.

(8) *Claims Appendix*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Evidence Appendix*

The Brief contains an evidence appendix but states no evidence was submitted.
(pursuant to 37 C.F.R. 1.130-1.132).

(10) Related Proceedings Appendix

The Brief contains a Related Proceedings Appendix but with a statement that there or no related proceedings.

(11) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5,6 are rejected under 35 U.S.C. 102(b) as being anticipated by Vermolen et al.

Regarding claim 1, as best understood, Vermolen et al. discloses a container having first and second chambers 36,40, a piston rod 44, a piston 38, a valve 60 (note the aperture at 106 or 98), a membrane 78 defining an "aperture" 108, a pressure signal supplied from an air spring to the valve (see col 3 lines 37-41), the valve functioning as claimed.

Regarding claim 2 note downtube 62. The chambers 36,40 communicate with an outlet at either 92 or 94 to in turn communicate with each other, as broadly claimed.

Regarding claim 3, as broadly claimed, these requirements are met at 78 in figure 3.

Regarding claims 5,6 these requirements are met. Note the discussion in column 3 and the control lines at 32.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Vermolen et al. in view of de Molina.

Regarding claim 4 simply to have used more than one disk in the area of 78 of Vermolen et al., as taught by de Molina at 136, would have been obvious to the ordinary skilled worker in the art simply to control the level of fluid flow through the valve to a desired level and therefore attain the damping characteristics desired from the suspension system. Note the through-hole at 106.

Allowable Subject Matter

Claims 7-17 stand allowed.

(12) Response to Arguments

Appellant's arguments have been considered but are not persuasive. It is noted from the Brief under the section "Summary of Claimed Subject Matter" that appellants claims are directed to the embodiment shown in figure 4. It is further noted that they now state that the "aperture" is at 130, contrary to what is disclosed in the specification, and contrary to their arguments in response to the Final Rejection.

Nevertheless, their primary argument seems to be that when the membrane 78 of Vermolen et al. is in the "closed" position (as interpreted by them) and is seated on the land at 96 fluid flow cannot communicate between the upper chamber 36 and lower chamber 40 through passage 92,98. First, to the extent appellant's device is capable of letting fluid flow through the passage or "aperture" 130 when in the "closed" or "second" position, as discussed on page 12 second paragraph of their specification, so is the device of Vermolen et al as shown in figure 3. Appellant's specification is somewhat lacking in this regard as to how this exactly happens, given the apparent rigid structure of the valve discs, as shown in figure 4 of their drawings. Note in figure 3 of Vermolen

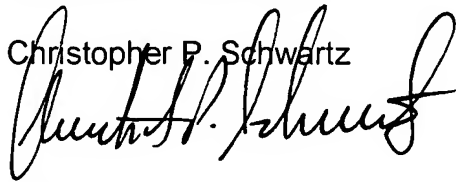
et al. the apparent angle with which the membrane 78 must "seat" on 96. Vermolen et al. also states in col 5 the thickness of this disc is considered to be a "tuning parameter", meaning that it can be changed accordingly.

Second, even with consideration given to appellant's argument that with the membrane 78 in the "closed position", or firmly seated against element 96, that fluid cannot pass through 108 the first chamber of Vermolen et al. can be interpreted as 36, the second chamber at 112 or 110, the "valve" can be interpreted as comprising 96,98,78,106,114, which further comprises the membrane 78, as broadly claimed. Fluid is therefore capable of flowing between the "first" and "second" chambers through the hole 106 defined by membrane 78.

For these reasons the rejection is maintained to be proper and should be sustained.

Respectfully submitted,

Christopher P. Schwartz



Conferees:

Cps

Rs



Jm

